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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/071,437

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Richard D. Stroman

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KLARQUIST SPARKMAN, LLP

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PORTLAND, OR 97204

EXAMINER

KARMIS, STEFANOS

ART UNIT

PAPER NUMBER

3693

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/071,437

**Applicant(s)**

STROMAN ET AL.

**Examiner**

STEFANOS KARMIS

**Art Unit**

3693

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 41-51, 53-55, 215, 218, 223-225, 227, 228, 235, 236 and 239-243 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 41-51, 53-55, 215, 218, 223-225, 227, 228, 235, 236 and 239-243 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/4/09
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This non-final rejection is in reply to the remarks filed 04 March 2009, by which claims 1-4, 41, 42, 49-51, 53-55, 215, 223-225, 227, 228, 235, 236, 239, 240, 242 and 243 are currently amended, claims 5-40, 52, 56-214, 216, 217, 219-222, 226, 229-234, 237, and 238 are canceled.
2. Claims 1-4, 41-51, 53-55, 215, 218, 223-225, 227, 228, 235, 236, and 239-243 are pending.

***Continued Examination Under 37 CFR 1.114***

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04 March 2009 has been entered.

***Information Disclosure Statement***

4. The information disclosure statement (IDS) submitted on 04 March 2009 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Response to Arguments***

5. Applicant's arguments, filed 04 March 2009, with respect to the rejection of claims 235-243 are 35 U.S.C. 112, first paragraph have been fully considered and are persuasive. Therefore this rejection has been withdrawn.
6. Applicant's arguments filed 04 March 2009, with respect to the rejection under Pratt have been fully considered but they are not persuasive.
7. Regarding claim 1, Applicant argues that Pratt fails to teach "*a plurality of animals [that] is managed according to a genetic improvement strategy developed by said one or more computers based on at least one genetic rule in a genetic rule database.*" The Examiner respectfully disagrees. In response to applicant's argument, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Taken as a whole, the limitations states "*one or more computers electronically detecting one or more animals of said plurality of animals, wherein said plurality of animals is managed according to a genetic improvement strategy developed by said one or more computers based on at least one genetic rule in a genetic rule database.*" Therefore, the active limitation in the claims is *one or more computers electronically detecting one or more animals of said plurality of animals*. The remainder of the limitation is not actively claimed and provides no added function into the claim. There are no active limitations stating how the animals are managed, how the genetic rule is applied or use of a genetic rule database for storing and retrieving such rules. Instead, it appears to be ancillary background information about the animals which are

electronically detected. Therefore, these features have no function in the claim and thus contain no patentable weight. For these reasons, Applicant's arguments are not persuasive.

8. Regarding claim 1, Applicant argues that Pratt fails to teach "*providing to said user an indication that a compliance enforcement system has determined that said electronically identified one or more detected animals satisfy a genetic requirement of a livestock marketing program.*" The Examiner respectfully disagrees. Pratt discloses data collected and reports generated (column 29, lines 46-48). Among the reports are marketing yard sheets that the computer system generates for each animal in the feedlot which show whether the animal satisfies genetic requirements, such as weight (column 30, lines 37-45 thru column 31, line 25 and accompanying/referenced Tables; Examiner notes that the information on the animal in the tables provides an indication of compliance enforcement system has determined that said electronically identified animals satisfy requirements. There is no functional step of sending data to a compliance enforcement system or a compliance enforcement system analyzing the data. Therefore the compliance enforcement system can be considered to merely be part of the computer system and report generation because it provides information to the user that the animal satisfied certain desired requirements).

Pratt discloses that the reports are provided to users such as the cattle producer, and that the report is valuable in determining profitable offspring and future breeding decisions (column 31, lines 14-25). For these reasons, Pratt does disclose "*providing to said user an indication that a compliance enforcement system has determined that said electronically identified one or more detected animals satisfy a genetic requirement of a livestock marketing program*" and therefore, Applicant's arguments are not persuasive.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-4, 41-51, 53-55, 215, 218, 235, 236, and 239-243 are rejected under 35 U.S.C. 102(b) as being anticipate by US Patent No. 6,000,361 to Pratt (hereafter Pratt).

In regard to claim 1, Pratt discloses a system and method for managing a plurality of animals comprising:

one or more computers electronically detecting and identifying each of said plurality of animals (see col. 11, lines 11-36);

said one or more computers collecting information on said plurality of animals in a database with sensing devices, wherein at least a portion of said collection occurs automatically (see col. 6, lines 34-52) and is based, at least in part, on said electronic detection (see col. 12, lines 22-28; col. 31, lines 26-32);

said one or more computers, based on at least a portion of said collected information, providing to said user an indication that a compliance enforcement system has determined that said electronically identified one or more detected animals satisfy a genetic requirement of a livestock marketing program (column 30, lines 37-45 thru column 31, line 25 and

accompanying/referenced Tables; Examiner notes arguments above in Response to Argument section also).

In regard to claim 2, Pratt further discloses providing access to a second user when said second user purchases one or more of said plurality of animals (see col. 7, lines 53-62).

In regard to claim 3, Pratt discloses the system and method set forth above, wherein said system comprises:

one or more computers ("host computer" —see col. 11, lines 31-37, see col. 9, lines 33-39);

a plurality of electronic devices ("EIDs") coupled to at least one of said computers, wherein the electronic devices are capable of detecting and identifying at least some of the plurality of animals (see col. 11, lines 11-36); wherein the one or more computers are configured to carryout the limitations noted in the rejection of claim 1 above.

In regard to claim 4, Pratt discloses the server as configured to provide access to a second user when said second user purchases one or more of a plurality of animals (see col. 7, lines 53-62).

In regard to claim 41, the method of Pratt as disclosed in the rejection of claim 1 anticipates the limitations of claim 41.

In regard to claim 42, the method of Pratt as disclosed in the rejection of claim 2 anticipates the limitations of claim 42.

In regard to claims 43 and 54, Pratt further discloses the operation of an ultrasound device (see col. 7, lines 6-16).

In regard to claims 44 and 55, Pratt further discloses the operation of an image capture device (see id.).

In regard to claim 45, Pratt further discloses the operation of a weighing device (see id.).

In regard to claim 46, Pratt further discloses the operation of a temperature sensing device (see col. 29, lines 19-22).

In regard to claim 47, Pratt further discloses operation of a height sensing device (see col. 29, lines 2-5).

In regard to claim 48, Pratt further discloses the operation of sensing devices occurring automatically (see Abstract).

In regard to claim 49, Pratt further discloses the collected information being processed as set forth in the rejection of claim 1.



In regard to claim 50, Pratt further discloses the prediction of future trends based, at least in part, on said collected information (see col. 5, lines 48-55).

In regard to claim 51, Pratt further discloses providing the user with an assessment of a livestock operation based, at least in part, on said collected information (see id.).

In regard to claim 53, the method of Pratt as disclosed in the rejection of claim 2 anticipates the limitations of claim 42.

In regard to claim 215, Pratt discloses a method of enabling a user to manage a plurality of animals, said method comprising:

one or more computers receiving attributes for an individual animal of said plurality of animals (column 11, lines 11-36 and column 12, lines 22-29);

the one or more computers collecting said attributes in a central database (see col. 6, lines 34-52 and see col. 12, lines 22-29; col. 31, lines 26-32);

the one or more computers, based at least in part on the collected attributes, providing said user with an analysis indicating that said individual animal satisfies a genetic requirement of a livestock management program (column 30, lines 37-45 thru column 31, line 25 and accompanying/referenced Tables; Examiner notes that the information on the animal in the tables provides an analysis that indicates the animal satisfies genetic requirements of a livestock management program (weight). There is no functional step of analyzing/comparing the data to

genetic requirements in the claim. Therefore the analysis can broadly interpreted to consist of the Tables of information provided in the reports that detail the animal genetic details and whether they satisfy desired lot/feed requirements); and

presenting said user with a plurality of product alternatives based, at least in part, on said analysis (column 29, Table 1 and column 38, line 65 thru column 39, line 16; Examiner notes that the user may enter product/animal alternatives. Examiner notes that "product alternatives" is broadly interpreted. Thus the "product" could be the animal, products related to the animal, software options, etc.).

In regard to claim 218, wherein said product alternatives include discontinuing said product (column 29, Table 1 and column 38, line 65 thru column 39, line 16).

In regard to claims 235 and 236, Pratt further discloses a medical database (see col. 5, lines 29-33; col. 6, lines 34-57).

In regard to claim 239, Pratt discloses sorting (see abstract).

In regard to claim 240, Pratt discloses said collected information and said processed information including genetic information (see col. 28, line 60 – col. 29, line 18).

In regard to claim 241, Pratt further discloses an environmental management system (see col. 29, lines 19-22).

In regard to claim 242, the server disclosed by Pratt is configured to provide access to a risk management tool (see e.g. col. 29, lines 30-35).

In regard to claim 243, the claimed limitations are deemed anticipated by Pratt as applied in above claim rejections. Pratt discloses the system and method set forth above, and further discloses a computer and software for carrying out the system and method.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 223-225, 227 and 228 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,000,361 to Pratt (hereafter Pratt) in view of US Patent Application Publication No. 2002/0065765 to Shuler.

In regard to claim 223, Pratt teaches a method of enabling a user to manage a plurality of animals, said method comprising:

one or more computers receiving attributes for an individual animal of said plurality of animals (column 11, lines 11-36 and column 12, lines 22-29);

the one or more computers collecting said attributes in a central database (see col. 6, lines 34-52 and see col. 12, lines 22-29; col. 31, lines 26-32);

the one or more computers, based at least in part on the collected attributes, providing said user with an analysis indicating that said individual animal satisfies a genetic requirement of a livestock management program (column 30, lines 37-45 thru column 31, line 25 and accompanying/referenced Tables; Examiner notes that the information on the animal in the tables provides an analysis that indicates the animal satisfies genetic requirements of a livestock management program (weight). There is no functional step of analyzing/comparing the data to genetic requirements in the claim. Therefore the analysis can broadly interpreted to consist of the Tables of information provided in the reports that detail the animal genetic details and whether they satisfy desired lot/feed requirements).

Shuler teaches a method of enabling a first user to manage information relating to a plurality of animals, said method comprising:

receiving a first communication from said first user, said communication requesting entry of animal attribute information into a central database (see [0027] and [0028]);

in response to said first communication, assigning an access indicator to said information (see [0029] and [0034]);

entering said information into said central database (see id.);

receiving a second communication from a second user having an access code that requests information in the central database (see [0034]-[0035]);

in response to said second communication, determining which access indicator is associated with said requested information (see [0045]);

limiting the quantity of requested information, for example by geography, to be provided to said second user based on said associated access indicator and said access code of said second user (see [0027]);

providing at least a portion of the requested information to a component configured to generate benchmarking information; and

automatically communicating inputted information to said second user (see Abstract).

Therefore it would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Pratt to include the multiple user teachings and access teachings of Shuler because it provides for managing cattle with the various parties that have an interest in the cattle so as to effectively manage decisions related to the animal and production related to the animal.

In regard to claim 224, Shuler discloses the system and method as accessible by buyers and sellers having secure access through usernames and passwords (see e.g. [0024]). Therefore the information exchanged via the server is private.

In regard to claim 225, Shuler discloses the notification of a user when information is input into a database (see e.g. [0050]).

In regard to claim 227, Shuler further discloses allowing a user to select a portion of said inputted information to communicate to another user (see [0041]).

In regard to claim 228, Shuler further discloses providing the user with the capability to view a report of said information.

With respect to the above rejections, the Examiner has cited particular portions of the reference(s), and although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the Applicant consider each cited reference in its entirety as potentially teaching the limitations of the claimed invention.

#### ***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEFANOS KARMIS whose telephone number is (571)272-6744. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully Submitted  
/Stefanos Karmis/  
Primary Examiner, Art Unit 3693  
18 May 2009